RECENT DECISIONS

BAIL—ERROR TO DENY MOTION TO UNDO FORFEITURE OF BAIL OF ONE CIVILLY DEAD.—The defendant was arrested in North Dakota for carrying a concealed weapon. His wife deposited a cash bail for his appearance in court, whereby, he was released. When the time for his appearance occurred he was in the penitentiary of another State, under a sentence for life on a charge and conviction of bank robbery. Hence, upon his failure to appear, the court declared the forfeiture of the bail money. The defendant and his wife made a motion to vacate the forfeiture. *Held,* forfeiture vacated. *State* v. *Williams* (N. D. 1922), 189 N. W. 625.

Obviously, the spirit of the law in regard to the point here involved is to discharge the surety upon a bail for any action by the State prejudicing the rights of the surety, without his knowledge and consent. *Cooper* v. *State* (1879), 5 Tex. Ct. App. 215, 32 Am. Rep. 571. Likewise, the surety will be discharged if the principal, having given bond to appear before the United States court in one district, is with the consent of that court, removed for trial under an indictment in another district. *In re Beavers* (1904), 131 Fed. 366. And, in *People* v. *Bartlett* (1842), 3 Hill (N. Y.) 570, it was held to be a good defense to an action against sureties on a recognizance that at the time the principal should have appeared before the court, that he was in jail in another county in the same State, upon a criminal charge. For the same holding see, *State* v. *Funk* (1910), 20 N. D. 145, 127 N. W. 722, 30 L. R. A. (N. S.) 211, cited in the opinion of the court as authority for the decision in the instant case.

The law does not regard the action of another State as favorable to the release of sureties on a bail bond, as it does the action of the State in which the bail bond is given. Thus, in direct conflict with the instant case, it has been held that if the performance of a recognizance be rendered impossible by the imprisonment of the principal in another State, it does not discharge bail. *King* v. *State* (1885), 18 Neb. 375, 25 N. W. 519; *Yarbrough* v. *Commonwealth* (1889), 89 Ky. 151, 12 S. W. 143; *Taylor* v. *Taintor* (1872), 83 U. S. 366, 21 L. Ed. 287.

The reason for the decision reached in the instant case seems clearly attributable to the fact that the court regarded the defendant as civilly dead; and regarded civil death equivalent to natural death, as a release of bail bond.

CHATTEL MORTGAGES—SUPERIOR TO SUBSEQUENT LIENS FOR REPAIRS, STORAGE AND THE LIKE.—The owner of a truck, gave the plaintiff a chattel mortgage on said truck, retaining same in his possession. Later the truck was delivered by the owner to the defendant for repairs, the defendant being in the general garage and automobile repair business. The plaintiff knew of this arrangement but made no objection to it. The defendant made the required repairs and stored the truck for some time;

then, not having been paid, held the truck for his charges. The plaintiff contended that his chattel mortgage was superior to the defendant's claim for repairs and storage. *Held,* chattel mortgage has priority. *Beecher* v. *Thompson* (Wash. 1922), 207 Pac. 1056.

Under CHATTEL MORTGAGES, 7 CYC. 39, there is a reason assigned for the fact that the chattel mortgage takes priority over the subsequent lien for repairs and storage. The reason is that the lien of the chattel mortgage and the lien of the repairman or warehouseman are both common law liens, and so the one which antedates the other should prevail.

Hammond v. *Danielson* (1879), 126 Mass. 294, expresses the opposite view of the question under discussion. By the terms of the chattel mortgage on a vehicle the mortgagor was left in possession. While the mortgagor had the vehicle in his possession certain repair work was done at his request. The person making the repairs set up his claim therefor and it was given priority over the chattel mortgage. The court reasoned from the analogy of repairs made to a vessel in admiralty cases. It was further said that there was implied authority to have the repairs made and bind the chattel for such repairs on account of the nature of the chattel.

The instant case is based directly on the decision of *Rothweiler* v. *Winton Motorcar Co.* (1916), 92 Wash. 215, 158 Pac. 737; and *Storms* v. *Smith* (1884), 137 Mass. 201. This latter Massachusetts case is five years later than the case of *Hammond* v. *Danielson, supra.* In *Storms* v. *Smith* the court held that a chattel mortgage has priority over a lien for storage, even though it is necessary for the goods to be stored somewhere to keep them from being ruined.

The mere fact that the mortgagor retains possession, in the absence of statute providing otherwise, affords him no implied authority to create a lien for storage superior to the right of the mortgagee. *Adler* v. *Godfrey* (1913), 153 Wis. 186, 140 N. W. 1115. This certainly seems to be the sounder doctrine.

Where authority to keep a chattel in repair is impliedly given by failure to secure possession upon default, the lien for repairs has priority over the prior chattel mortgage. *Scott* v. *Delaliunt* (1875), 65 N. Y. 128. This was a case of a canal boat being repaired and the court may have been influenced by the admiralty rulings, although there is no reference made to admiralty, the decision being based upon the implied authority granted. In a later New York case it was held that in spite of the statute giving a warehouseman or repairman a lien for his charges the mortgagee has priority, unless there is some authority granted by him for the act of the mortgagor. *Baumann* v. *Post* (1890), 16 Daly (N. Y.) 385, 12 N. Y. S. 213.

It seems from examination of the authorities that even in the States holding that the repairman's lien comes ahead of the chattel mortgage, there has to be some implied authority given by the mortgagee to the mortgagor in order to bind the mortgagee. On reason and principle it seems that it should be necessary for the mortgagor in possession to have express authority, as the mortgagee is not able to follow the chattel around, and when he records his chattel mortgage in the proper office he has put the public sufficiently on notice of his interest in the chattel.

To hold the opposite view is to leave the door open for fraud on the mortgagee.

This point has not been passed upon in Virginia. This is probably due to the fact that claims of this character are usually small, and for this reason do not come within the appellate jurisdiction of the Supreme Court of Appeals.

See L. R. A. 1915D, 1149, for a comprehensive note on the subject.

CONSTITUTIONAL LAW—SERVICE LETTER LAW HELD VALID.—After being an employee of defendant insurance corporation for more than ten years, plaintiff resigned his employment, and demanded of defendant's superintendent a letter setting forth the nature and character of the services rendered by him to the corporation, the duration thereof, and the reason for the termination of the employment. The defendant, acting through its superintendent, refused to give plaintiff such a letter, and plaintiff then sued defendant for damages he claimed to have suffered in not securing other employment because he did not have the letter he had requested. He based his action on a Missouri statute which requires a corporation to issue to an employee who is discharged or leaves its service after more than ninety days' service with it, a letter stating the character of service rendered by the employee, the duration thereof, and the true cause for its termination. Defendant claimed the statute was invalid as taking away its freedom of contract without due process of law, and, therefore, violative of the Fourteenth Amendment to the Constitution of the United States. *Held,* statute constitutional and plaintiff allowed to recover. *Prudential Ins. Co. of America* v. *Cheek* (1922), 42 Sup. Ct. 516.

EQUITY—REFORMATION OF AN INSTRUMENT BECAUSE OF MUTUAL MISTAKE OF LAW.—A board of supervisors executed a lease to a party on a tract of land which was valuable only for the timber growing thereon, and the said lease was executed, and received, with the mutual understanding that the lessee would have the right to cut said timber, but this fact was not mentioned in the lease. The lessee forfeited his lease and the defendants became the assignees of the lease. Later another lease was executed to the defendants which had a recital in it that said lease did not confer any greater rights to said timber than the original orders and conveyances herein above referred to. After some of the timber was cut, it was discovered that the board of supervisors did not grant the right to cut timber in either their original lease or new lease, and this suit was brought for conversion of the timber. The defendant contended that the court of equity should reform the instrument in accordance with the agreement of the original parties, thereby giving him the right to cut timber. *Held,* the defendant is liable for conversion. *Ingram Day Lumber Co.* v. *Robertson, etc.* (Miss. 1922), 92 So. 289.

While it is true that mistakes in matters of law cannot be made ground for relief in equity, this rule is not universal. On the contrary, if one, through mistake or misapprehension of law, parts with or gives up a private right of property upon grounds on which he would not have acted but for such misapprehension, a court of equity may grant relief. *Baker* v. *Massey* (1879), 50 Iowa 399; *Bottorff* v. *Lewis* (1903), 121 Iowa 27, 95